## REMARKS

Claims 1-54 are pending in the application.

Claims 1-54 have been rejected.

Claims 17-22 have been objected to.

Claims 1, 10, 17, 23, 47 and 48 have been amended, as set forth herein.

### I. CLAIM OBJECTIONS

Claim 17, and by dependency Claims 18-22 were objected to due to informalities. Claim 17 has been amended to correct the noted informalities.

### II. REJECTION UNDER 35 U.S.C. § 102

Claims 1, 4-5, 8-10, 13-17, 22-23, 28-29, 47 and 48 were rejected under 35 U.S.C. § 102(b) as being anticipated by McDonough (US Patent No. 5,625,748). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

McDonough recites a system that classifies communications into different topics. (Col. 4, Lines 27-34). The system includes a speech event frequency detector. (Col. 5, Lines 45-48). The speech event frequency detector identifies the frequency at which various words or phrases appear in a communication. (Col. 6, Lines 23-29). The communication is then classified based on the frequency that the words and phrases are used. (Col. 5, Lines 62-64). McDonough simply describes classifying communications based on the frequency at which words and phrases appear in the communications.

With respect to independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent claims), Applicant respectfully disagrees with the Office Action's position that McDonough shows associating values to the voice representations (each corresponding to a different word or phrase) detected by the system and using the final criteria measurement value (incremented by the value(s) for each voice representation of a word or phrase is found in the received voice information) to select an action to be performed. The Office Action asserts that McDonough discloses a value associated with each voice representation, citing Col. 6, lines 41-42 [as parameter values for individual event distributions]. Office Action, page 3. McDonough describes "topic" modeling and estimating parametric probabilistic models for event frequency in the form of multinomial distributions, etc. Col. 6, lines 30-42. As asserted previously, it is unclear how these probabilistic models and distributions translate to "a value" for each stored voice representation (corresponding to a word or phrase). McDonough, therefore, fails to anticipate "one or more voice representations," where each voice representation is "associated with a value" as those features/elements are described in Applicant's specification.

However, in order to further prosecution, Applicant has amended these independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent claims) to recite the final criteria measurement value based on the value associated with each determined stored voice representation occurring in the voice message [information].

Applicant respectfully submits that McDonough fails to anticipate analyzing a voice message (or information) to "generate a final criteria measurement value associated with the voice message [information]" and performing one or more of the stored actions "based on the final criteria measurement value" wherein the final criteria measurement value based on the value associated with each determined stored voice representation occurring in the voice message [information]. The Office Action points to the summation of confidence scores over the speech data (Col. 7, lines 28-44) in support of its anticipation. However, McDonough appears to simply to use probabilities to detect the likelihood that a word or phrase is present in the speech, and then using it to calculate the expected number of occurrences of the word or phrase. In contrast, the claims recite that a value

is associated with a particular stored voice representation (and for example, the values may be different based on the identity of the voice representation) and that the final criteria measurement value based on the value associated with each determined stored voice representation occurring in the voice message [information]. Based on this, not only is the number of times the word or phrase (ie., voice representation) is present in the speech determined, but the values allow a final criteria measurement value to be calculated – with the final criteria measurement value providing the ability to weight various words/phrases with respect to each other (some may be more important than others, when detected). As a result, Applicant respectfully submits that the method of using confidence scores in McDonough does not provide a final criteria measurement value -- as that term is described and utilized in the Applicant's specification -- associated with the speech segment (at issue) based on the number of occurrences - McDonough is simply determining the expected number of occurrences, without reference to a final criteria measurement value based on the assigned value per stored voice representation.

Based on the foregoing, McDonough fails to show each and every element of Applicant's invention as recited in the amended independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent claims).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 1, 4-5, 8-10, 13-17, 22-23, 28-29, 47 and 48.

## III. REJECTIONS UNDER 35 U.S.C. § 103

Claims 2, 11, 18, 24, 30, 32, 35-37, 39-41, 43-44, 46 and 49-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289). Claims 6-7, 20-21, 26-27 and 51-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Epstein (US Patent No. 6,327,343). Claims 3, 12, 19, 25, 31, 33-34, 38, 42, 45 and 53-54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of

Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289), and further in view of Epstein (US Patent No. 6,327,343). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and

the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

As described above, independent Claims 1, 10, 17, 23, 47, and 48 are allowable over McDonough. Neither Furui or Epstein appear to disclose, teach or suggest that the final criteria measurement value based on the value associated with each determined stored voice representation occurring in the voice message [information] as described and interpreted in Applicant's specification. Therefore, those dependent Claims 2-3, 6-7, 11-12, 18-21 and 24-27 are allowable.

The Office Action categorizes independent Claims 30, 37, 41, 44, 49 and 50 (and their dependent Claims) as reciting essentially the same subject matter, and therefore relies on the rejection of independent Claim 30 to reject these other independent Claims. See, Office Action, pages 11-14. Applicant respectfully submits that McDonough fails to recite analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message." The predetermined pattern of speech is "a tone of the speech in the voice message" or "a frequency of the speech in the voice message." Spotting simply the words and phrases using HMMs is not equivalent to determine if a pattern of speech exhibits a tone or frequency – such as *if a message is urgent, a caller may speak rapidly, be out of breath or be speaking in a high pitch.* See, Applicant's Specification, page 7, lines 7-11. Applicant submits that determining whether a pattern of speech (not a simple frequency within, or tone of, a small portion of speech) has an overall tone or frequency is not the same as simply determining speech based on the underlying tone or frequency of small partitioned pieces. It does not appear that Furui discloses such feature or elements either. While Furui may teach about the essential nature of voice containing frequency and tone (of each small portion), as note din the Office Action, this

is not equivalent or even similar to analyzing if a predetermined pattern of speech in a voice message exhibits a tone of speech or frquency of speech – as described in Applicant's specification.

Therefore, independent Claims 30, 37, 41, 44, 49 and 50 (and their dependent Claims) are not obvious in view of McDonough-Furui.[1]

Similarly, regarding independent Claims 51-54, the Office Action relies on Epstein simply to show the use of a computer readable medium. The Office Action fails to indicate that Epstein discloses the use of "one or more voice representations" each "associated with a value," analyzing a voice message to "generate a final criteria measurement value associated with the voice message (or information)," and performing one or more actions "based on the final criteria measurement value" as recited in Claims 51-52. The Office Action also fails to indicate that Epstein discloses analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message" as recited in Claims 53-54. See Applicant's response above with respect to independent Claims 30, 37, 41, 44, 49 and 50.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 2-3, 6-7, 11-12, 18-21, 24-27, 30-46 and 49-54.

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[1] In addition, McDonough fails to show analyzing the tone and/or frequency of speech in a voice message to determine which action to perform. The Office Action points to Furui as teaching this element/feature. Furui does not appear to describe performing one of the stored actions - as that term is described in the Applicant's specification - if the predetermined speech (a tone of speech or a frequency of speech) is found to occur.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***rmccutcheon@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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